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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 5, 2007

10:04 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

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HEARING re Motion for Order (i) Authorizing Debtors to Obtain
Post-Petition Financing and (ii) Authorizing Debtors to
Refinance Secured Post-Petition Financing and Pre-Petition
Secured Debt

HEARING re Limited Objection to the Motion for Order (i)
Authorizing Debtors to Obtain Post-Petition Financing and (ii)
Refinance Secured Post-Petition Financing and Pre-Petition
Secured Debt filed by Howard County, Indiana

Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay. Delphi
3 Corporation?

4 MR. BUTLER: Your Honor, good morning. Jack Butler
5 and Kayalyn Marafioti from the Skadden firm here representing
6 Delphi Corporation on a specially set hearing dealing with our
7 expedited motion for approval of a replacement debtor-in-
8 possession financing facility. The DIP financing motion was
9 filed at Docket number 6180.

10 Your Honor, there's been only one objection filed to
11 this motion. It was the limited objection of Howard County,
12 Indiana to the DIP at Docket number 6369 and that matter was
13 based on a concern that Howard County had that somehow the
14 refinancing could negatively affect their tax liens. That
15 objection was resolved and they understood that the refinancing
16 does not adversely in any material respect their current
17 priority of their tax liens to secure outstanding tax claims
18 relative to other liens. And we've assured them that the tax
19 liens will have the same priority relative to the first
20 priority DIP liens as they currently have relative to the
21 existing DIP liens and will have the same priority relative to
22 the second priority DIP liens as they currently have relative
23 to the liens held by the pre-petitioned secured lenders. On
24 that basis, Howard County is not pressing their objection.

25 Your Honor, we also filed, in addition to a reply to

1 that objection, we filed a summary of modifications to the form
2 of order of credit agreement, Docket number 6446. I'd like to
3 briefly address the changes to be made since the filing of the
4 motion.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, with respect to the proposed
7 order, we have made four changes to conform the order to the
8 underlying agreements between the parties. First, we changed
9 paragraph 5(b) to reflect that the pre-default carve-out for
10 professional fees will increase from five to ten million
11 dollars. That's because assuming that at some point the ECPA
12 is approved, the investment agreement is approved. The
13 transaction expenses defined under that agreement are included
14 within the carve-out and, therefore, the amount of the carve-
15 out was increased.

16 We added -- the second thing we did was add a clause
17 3 to the end of paragraph 5(a) to make it clear that the
18 Tranche C super party claims are the pari passu with the right
19 to the setoff claimants.

20 Third, we add a paragraph 10 and amended paragraph 11
21 to clarify that the lenders under both the DIP facility and the
22 pre-petition facility would receive the fees, expenses and
23 indemnities that they're entitled to under the respective loan
24 documents.

25 And, finally, what is now paragraph 14, we added

1 language to make clear that the liens held by the pre-petition
2 lenders are valid and that the pre-petition lenders' claims are
3 valid and oversecured.

4 With respect to the credit agreement, we also filed a
5 blacklined credit agreement yesterday as part of our reply.
6 And there were two primary changes made to that credit
7 agreement since the agreement we filed on December 26th. Your
8 Honor may recall that while this motion was filed earlier, your
9 scheduling order had indicated that we should file a credit
10 agreement on December 26th. We did do that and serve it.
11 There were two changes to the credit agreement that is before
12 the Court today.

13 The first is the increase in the carve-out that I
14 just mentioned that was described also in a DIP order. The
15 second are provisions governing whether the debtors can undergo
16 a change of corporate control without being in default of the
17 terms of the credit agreement. The change of control provision
18 contained in the December 26th agreement provided the
19 acquisition of a controlling stake in the debtors by the plan
20 investors was not a default but any other change of control
21 constituted default. Given the Highland offer and given other
22 facts and circumstances, the DIP lenders agreed that the
23 occurrence of a change of control default based on the
24 acquisition of Delphi's stock would be deleted. And that has
25 been eliminated from the credit agreement.

1 Those, Your Honor, are the primary changes to the two
2 documents. As Your Honor's aware, this motion deals with,
3 really, two facilities the debtors have. First, our existing
4 DIP facility, which consists of a 1.75 billion dollar revolving
5 line of credit and a 250 million dollar term loan with a
6 maturity date of October 8th, 2007.

7 The second facility this addresses are the secured
8 obligations that arise under a third amended and restated
9 credit agreement in a pre-petition period dated June 14th,
10 2005. And as of the petition date, the debt to that group of
11 lenders was in the approximate amount of 2.6 billion dollars
12 and it's now just slightly under, I think approximately 2.5
13 billion dollars.

14 Your Honor, this agreement provides for the
15 refinancing of both of those transactions and to a DIP
16 transaction of approximately 4.5 billion dollars. One thing I
17 want to point out in connection with the pre-petition lenders
18 agreement, this will resolve and will conclude obviously, upon
19 closing, all the cash collateral provisions and protections
20 that have been put in place with respect to the pre-petition
21 facilities. Your Honor will recall we had some extended
22 litigation about that in the beginning of the case.

23 I do want to point out that the pre-petition lenders
24 have reserved their rights to challenge our ability under a
25 plan of reorganization to discharge certain obligations under

1 the facility even though it's been repaid and they reserve the
2 right to raise those issues in the planning confirmation
3 context. And of course, we reserved our rights to argue to the
4 contrary. That mostly has to do with indemnifications and
5 other kinds of claims that they might argue would be contingent
6 in nature.

7 Your Honor, with respect to the replacement facility,
8 it is substantially similar in terms of its terms and
9 conditions to the DIP facility. The primary changes here, from
10 the debtors' perspective, are obviously the size. It's
11 increased by about 2.5 billion dollars. But more importantly,
12 it's the economics. As we said in our motion, we had the
13 opportunity to take advantage of very robust capital markets
14 that allowed us to execute what really is, you know, if not the
15 large -- I think it's approximately the largest DIP ever
16 financed. This financing at 4.5 billion dollars is being
17 undertaken by our agents and placements on a best efforts
18 basis. That's resulted in us spending relatively little money
19 in terms of commitment and other transactions and, yet, we have
20 a very reasonable degree of confidence that come next week, if
21 Your Honor approves this, it in fact, will close. When it
22 closes, we'll save about eight million dollars a month in
23 interest expense as a result of being able to refinance the
24 pre-petition security -- pre-petition facilities rates that are
25 currently running us between twelve and a quarter, thirteen and

1 three quarters percent. And when you look at the base rate
2 calculation under that facility -- to, at the moment, a cost of
3 about 8.6 percent which is calculated at 325 basis points above
4 LIBOR.

5 In addition, our DIP lenders have agreed to reduce
6 the actual interest charged on the DIP itself from a post-
7 petition basis by reducing that by twenty-five basis points.
8 And that reduces the effective interest rate, at least
9 estimated at close, from just over eight percent to about just
10 under 7.9 percent. And so there's a reduction there. When you
11 do the math, that saves us, based on the current usage of the
12 DIP, about eight million dollars a month which happens to be
13 about what the cost of putting this facility in place is. So
14 the payback on this particular transaction is one month. We
15 should be so fortunate to have those kinds of paybacks in large
16 transactions we bring before the Court.

17 Your Honor, I also wanted to point out that, as this
18 will result in the repayment of the pre-petition credit
19 facility, the proposed order does provide that the January 18,
20 2007 deadline, under paragraph 16 of the existing DIP order for
21 the creditors' committee to review the pre-existing liens and
22 other aspects of the pre-existing transaction, would be
23 terminated upon entry of the proposed order.

24 Your Honor, the last thing I would indicate to the
25 Court, and just in terms of introduction to this, is that the

1 refinancing of the existing bank debt is permitted under the
2 relevant transaction documents that we have been dealing with
3 throughout this case. Article 2.10 of the pre-petition credit
4 facility specifically permits the debtors to prepay the pre-
5 petition credit facility and we had negotiations in connection
6 with the existing DIP facility where the secured lenders waived
7 their right to any prepayment premiums or prepayment penalties.
8 There's also a paragraph of the existing DIP order, paragraph
9 12(c), which permits prepayment of the pre-petition credit
10 facility if that prepayment is part of a transaction in which
11 the obligations of the existing DIP facility and the pre-
12 petition credit facility are repaid or refinanced in whole,
13 which is exactly what the transaction before Your Honor does.

14 We have, Your Honor, in the courtroom Mr. Sheehan,
15 the chief restructuring officer of the company, and Mr. Shaw,
16 our investment banker from Rothschild, who were both
17 instrumental in representing the company's interest in this
18 refinancing transaction, including the solicitation of
19 interests from various lenders, looking at competing facilities
20 and ultimately deciding on the structure moving forward. We
21 could either proffer that testimony or otherwise present them
22 to Your Honor if Your Honor wants to hear them but there are no
23 objections to the facility.

24 THE COURT: Well, why don't you give me just a brief
25 proffer since the order refers to it?

1 MR. BUTLER: Your Honor, Mr. Sheehan is here and if
2 called to testify, he would testify that the debtors solicited
3 and entertained offers for replacement financing from lenders
4 who had already conducted extensive due diligence of the
5 debtor. He would testify that in the debtors' business
6 judgment, the proposal by JP Morgan offered the most favorable
7 terms due to the transaction cost savings and the efficiency
8 that only the debtors' established lending agent could provide
9 in that it gave, from the company's perspective, it was the
10 business judgment that they were the most efficient party to be
11 able to effect this refinancing transaction.

12 Mr. Sheehan would testify that the replacement
13 financing facility will have essentially the same terms as the
14 existing DIP facility except for terms which are, in the
15 judgment of the debtors, more favorable to the debtors and the
16 estates, including an increase in the size of the facility of
17 4.5 billion, a savings of considerable interest as I described
18 to you in terms of the change in interest rates that I've
19 previously described on the record and an economic cost to
20 complete the new transaction in terms of fees of eight million
21 dollars or less based on a best interest refinancing and
22 undertaking by JP Morgan.

23 Mr. Sheehan would testify that the fees charged by JP
24 Morgan and the lender group are, in the judgment of the
25 debtors, comparable to those sought by the other bidding

1 investment bank group and the expenses will be recovered early
2 in the first quarter of this year.

3 Your Honor, I think Mr. Sheehan would testify,
4 finally, that, in the debtors' business judgment, the savings
5 and beneficial terms to be achieved by this facility will and
6 should maximize the recovery for all stakeholders and the
7 refinancings in the best interest of the debtors' estates.
8 That would be the sum and substance of Mr. Sheehan's testimony.
9 I also have the proffer of Mr. Shaw.

10 THE COURT: Okay. And I'm assuming, given that there
11 are no objections, no one wants to cross-examine Mr. Sheehan?
12 Okay. I'll hear the other proffer.

13 MR. BUTLER: With respect to Mr. Shaw called to
14 testify, he would testify that he's the director at Rothschild,
15 Inc., which is the financial advisory investment banker for the
16 debtors. He would testify that as a result of the favorable
17 conditions in the capital markets coupled with the positive
18 momentum in the debtors' reorganization, the debtors concluded
19 with the assistance of Rothschild that refinancing the debtors'
20 secured debt facilities at this moment in their cases could
21 lead to a considerable savings and better position the debtors
22 to merge from Chapter 11 reorganization.

23 Mr. Shaw would testify that Rothschild assisted the
24 debtors in soliciting and reviewing offers for replacement
25 financing from lenders who had already conducted extensive due

1 diligence to the debtors. He would testify that the proposal
2 submitted by JP Morgan offered, in the opinion of Rothschild
3 and the debtors, the most favorable terms due to the
4 transaction cost savings and the efficiency of the debtors'
5 established lending agent could provide.

6 He would testify that the terms of the replacement
7 financing facility, including the fees charged by the lenders
8 and the interest rates charged for the financing are fair, are
9 comparable to those sought by the other bidding investment bank
10 group and represent, in the opinion of Rothschild, the market
11 rates for financing facility such as these.

12 Mr. Shaw would further testify that the rate
13 decreases described in the motion are not guaranteed and only
14 represent estimates of the rates that will be obtained based on
15 their experience -- JP Morgan's experience in deals of this
16 nature. But that the lack of underwriting has enabled the
17 debtors to benefit from low fees in terms of fees paid to
18 accomplish and implement the transaction.

19 Mr. Shaw would testify that, in Rothschild's analysis
20 and the debtors' analysis, that the repayment of the pre-
21 petition secured debt is appropriate because it appears to be,
22 and the debtors believe that it is oversecured. And he would
23 also finally testify that, based on his expertise and that of
24 Rothschild's, Rothschild advised the debtors that the savings
25 and beneficial terms to be achieved through the financing

1 facility should maximize the recovery for stakeholders and
2 refinancing was, in his opinion, and is, in his opinion, in the
3 best interest of the debtors' estate. That would be the sum
4 and substance of Mr. Shaw's testimony.

5 THE COURT: Okay. Does anyone want to cross-examine
6 Mr. Shaw? All right. I'll accept that proffer.

7 MR. BUTLER: Thank you, Your Honor. I have nothing
8 further, Your Honor unless the Court has questions.

9 THE COURT: You said that this is expected to close
10 next week?

11 MR. BUTLER: Yes, Your Honor.

12 THE COURT: And I guess that's why the document was
13 dated January 9th?

14 MR. BUTLER: Yes, Your Honor.

15 THE COURT: Okay. All right.

16 MR. BUTLER: And that's also why we're asking the
17 Court to make the order immediately effective.

18 THE COURT: Okay. And there's no pre-payment premium
19 or penalty on this facility either, is there?

20 MR. BUTLER: No, Your Honor. No premium payment or
21 penalty is being paid to anyone.

22 THE COURT: Okay. Does anyone have anything to say
23 on this motion?

24 MR. SEIDER: Yes, Your Honor, if I might be heard
25 briefly.

1 THE COURT: Sure.

2 MR. SEIDER: Mitchell Seider of Latham & Watkins on
3 behalf of the official committee of unsecured creditors. Your
4 Honor, after the debtors described the proposed financing to
5 the committee, it certainly sounded attractive and so the
6 committee set about doing diligence. We reviewed the documents
7 that were filed with the Court as well as the fee letter and
8 the commitment letter and the committee, through its
9 professionals, were satisfied that the economics were as they
10 had been represented to us and, therefore, it was attractive.

11 We along with the assistants of the committee's
12 conflicts counsel made a few comments to the debtors with
13 respect to the proposed order and the credit agreement. Those
14 comments have been incorporated into the revised order and the
15 revised credit agreement, as Mr. Butler described, and we are
16 now satisfied with the form of order and with the credit
17 agreement and, of course, we'd support the entry of the order.

18 THE COURT: Okay. And so your review included an
19 assessment of the pre-petition secured lenders' rights?

20 MR. SEIDER: Yes, Your Honor, and I thank you for
21 raising that. Conflicts counsel has been diligencing that
22 issue since the time really of its hire and we are satisfied
23 now that that is appropriate under the circumstances.

24 THE COURT: All right. Well, I reviewed the, not
25 only the motion but the blacklined proposed order and

1 blacklined agreement and each of the changes made improves the
2 transaction as far as the estates are concerned. It's
3 obviously somewhat unusual to pay down two and a half billion
4 of pre-petition debt. However, given the circumstances of this
5 case, not only the committee's review of the lenders' liens but
6 also as reflected by, among other things, the advents of any
7 remaining objection to this motion, I think the various
8 constituents of the debtors, as well as myself, are satisfied
9 that the benefits of this refinancing, and that includes
10 refinancing of the pre-petition debt, exceed the value to the
11 estate of keeping the pre-petition debt in place and keeping
12 the existing DIP in place.

13 So I will approve the refinancing as sought.

14 MR. BUTLER: Thank you, Your Honor. Your Honor, I
15 have a clean copy of the final order, if I can pass it up.

16 THE COURT: That's fine. So that will get entered
17 today. Given that there were no remaining objections and the
18 benefit to the debtors of closing the transaction promptly, I
19 have no problem with the waiver of the ten-day period.

20 MR. BUTLER: Thank you, Your Honor. Your Honor,
21 that's the only matter on today's agenda.

22 THE COURT: Okay. Very well. Thank you.

23 (Whereupon this proceeding concluded at 10:23 a.m.)
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I N D E X

R U L I N G S

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C E R T I F I C A T I O N

I, court approved transcriber, certify that the foregoing is a
correct transcript from the official electronic sound recording
of the proceedings in the above-entitled matter.

Signature of Transcriber Date

Lisa Bar-Leib
typed or printed name

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